

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sam Goody, Inc. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9-A of the Tax Law for :
the Years 1974 - 1976. :
_____:

AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 6th day of July, 1984, he served the within notice of Decision by certified mail upon Sam Goody, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sam Goody, Inc.
46-35 54th Rd.
Maspeth, NY 11378

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
6th day of July, 1984.

David Parchuck

William J. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sam Goody, Inc. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9-A of the Tax Law :
for the Years 1974 - 1976. :

AFFIDAVIT OF MAILING

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 6th day of July, 1984, he served the within notice of Decision by certified mail upon Gerald J. Roth, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald J. Roth
Mann, Judd, Landau & Co.
230 Park Ave.
New York, NY 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
6th day of July, 1984.

David Parachuck

Ramona R. Hagedorn
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

July 6, 1984

Sam Goody, Inc.
46-35 54th Rd.
Maspeth, NY 11378

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due, or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Gerald J. Roth
Mann, Judd, Landau & Co.
230 Park Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SAM GOODY, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Years 1974	:	
through 1976.	:	

Petitioner, Sam Goody, Inc., 46-35 54th Road, Maspeth, New York 11378, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1974 through 1976 (File No. 20384).

A formal hearing was held before William J. Dean, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 29, 1979 at 1:15 P.M. Petitioner appeared before Gerald J. Roth, Esq. and Stanley Berlinger, CPA, of Mann Judd Landau, CPA's. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the Audit Division should have allowed a deduction taken by petitioner on its franchise tax reports for the years 1974 through 1976 for interest expense attributable to subsidiary capital.

FINDINGS OF FACT

1. Petitioner, a domestic corporation, filed "New York State Corporation Franchise Tax Report Article 9-A, Tax Law" forms for the years 1974 through 1976. On each report petitioner deducted interest expense attributable to subsidiary capital.

2. The Audit Division disallowed interest attributable to subsidiary capital as a deduction in the computation of entire net income on the basis of section 208.9(b)(6), Article 9-A of the Tax Law. The method used for determining the amount of indirect interest was to multiply total interest expense by the percentage resulting from dividing the average fair market value of subsidiary assets by the average fair market value of total assets.

3. During the years in question, petitioner had excluded no income from subsidiary capital in computing its entire net income.

CONCLUSIONS OF LAW

A. That Tax Law section 208, subdivision 9 furnishes the definition for and method of computing entire net income; paragraph (a), subparagraph (1) thereof provides that entire net income shall not include "income, gains and losses from subsidiary capital...". Paragraph (b) sets forth those exclusions, deductions and credits which are not permitted in the determination of entire net income and provides, in pertinent part:

"Entire net income shall be determined without the exclusion, deduction or credit of:

* * *

(6) in the discretion of the tax commission, any amount of interest directly or indirectly and any other amount directly attributable as a carrying charge or otherwise to subsidiary capital or to income, gains or losses from subsidiary capital."

The regulation in force for years prior to 1976 addressed the above two provisions as follows:

"After determining Federal taxable income, it must be adjusted as follows:

* * *

Deduct from Federal taxable income:

(8) All dividends, interest and gains from subsidiary capital...which were taken into account in computing Federal taxable income (less, in the discretion of the State Tax Commission, any deductions allowed in computing Federal taxable income for (1) interest which was directly or indirectly attributable, and (2) any other amounts which were directly attributable, as a carrying charge or otherwise, to subsidiary capital or to income and gains therefrom), but not any other income from subsidiaries...". Former 20 NYCRR 3.11(b).

The regulation effective for taxable years commencing on or after January 1, 1976, as amended on August 20, 1979, provides as follows:

"Adjustments: Items to be added to Federal taxable income... (a) In computing entire net income, Federal taxable income must be adjusted by adding to it:

* * *

(7) any amount of interest directly or indirectly attributable to subsidiary capital or subsidiary income, and any other amount directly attributable as a carrying charge, or otherwise, to subsidiary capital or to income, gains or losses from subsidiary capital, except to the extent such additions are not required by virtue of an exercise of discretion by the Tax Commission;

(8) all losses from subsidiary capital which were deducted in computing Federal taxable income...". 20 NYCRR 3-2.3.


B. That the Commission does not choose to exercise the discretion accorded to it under Tax Law section 208.9(b)(6) to allow petitioner a deduction for the amount of interest indirectly attributed to subsidiary capital. The taxpayer's exclusion of income from subsidiary capital is not a prerequisite to the disallowance, in the same taxable year, of the interest deduction. To conclude otherwise would allow taxpayers, via the appropriate timing of distributions to parent corporations from subsidiaries, to avoid taxation on such distributions, while at the same time taking advantage of the interest deduction.

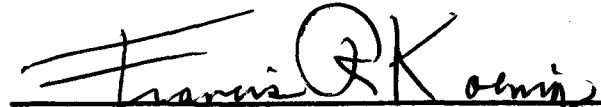
C. That the petition of Sam Goody, Inc. is denied.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 06 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

RETURNED
TO
CERTIFIED
[Signature]

REASON CHECKED

Unclaimed ☒ Refused ☐
Addressee unknown ☐
Insufficient Address ☐
No such street ☒ Quoted ☐
No post office in State ☐
Do not deliver in this country ☐

Sam Goody, Inc.
46-35 54th Rd.
Maspeth, NY 11378

TAX APPEALS BUREAU
JUL 16 1984
RECEIVED

CERTIFIED
P 440-977 211
MAIL



REQUEST FOR BETTER ADDRESS

Requester Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request 7/16/84
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition Jan - Dec - 7/6/84
Name Sam Goody, Inc.	
Address 46-35 54 th Rd. Maspeth, N. Y. 11378	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by D.D.	Section	Date of Search 7/16/84
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

July 6, 1984

Sam Goody, Inc.
46-35 54th Rd.
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Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Gerald J. Roth
Mann, Judd, Landau & Co.
230 Park Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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B. That the Commission does not choose to exercise the discretion accorded to it under Tax Law section 208.9(b)(6) to allow petitioner a deduction for the amount of interest indirectly attributed to subsidiary capital. The taxpayer's exclusion of income from subsidiary capital is not a prerequisite to the disallowance, in the same taxable year, of the interest deduction. To conclude otherwise would allow taxpayers, via the appropriate timing of distributions to parent corporations from subsidiaries, to avoid taxation on such distributions, while at the same time taking advantage of the interest deduction.

C. That the petition of Sam Goody, Inc. is denied.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 06 1984


PRESIDENT


COMMISSIONER


COMMISSIONER